IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 288 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
VAIDHRAJ VELJIBHAI VASRAM KADVA PATEL - Respondent(s)

==========

Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR NR DIVETIA for Respondent(s) : 1,
MR SN DIVATIA for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mr. Manish R. Bhatt, learned counsel for the Revenue. Mr. S.N. Divatia, learned counsel for the assessee.

2. At the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench 'C', Ahmedabad, has made this Reference under Section 256(1) of the Indian Income Tax, on the following questions for opinion of this Court;

> 1. Whether on the facts and in the circumstances of the case the Appellate Tribunal was justified in law in holding that the provisions of section 13(3)(b) applied only to trusts which were purely for charitable purposes and the assessee trust was entitled to exemption under section 11 of the Income-tax Act, 1961 ?
>
> 2. Whether in view of the finding of the Income-tax Officer that even though the trust was described to be a charitable cum religious trust the Appellate Tribunal was right in law in holding that the provisions of section 13(1)(b) of the Act did not apply and the exemption as claimed was available under section 11 of the Act ?
>
> 3. Whether the appellate Tribunal was justified in holding that the amendment of the trust deed on 8-5-87 should be

regarded as clarificatory in nature and it should be made applicable ever since the inception of the assessee trust ?'

3. The basic question, raised in the Reference, is that if the Trust is a charitable-cum-religious Trust, would it be entitled to exemption under Section 11 of the Income Tax Act, 1961 or provisions of Section 13(1)(b) would apply for disallowance of the exemption. In the matter of 213 ITR 492 [*Shantagauri Ramniklal Trust And Others Vs. Commissioner of Income Tax And Another, 239 ITR 528*,], an identical question has been answered by a Division Bench of this Court by holding that provisions of Section 13(1)(b) of the Act would not apply, if the Trust is a charitable-cum-religious Trust. Following that Judgment, we have also decided Income Tax Reference No. 234 of 1995 in favour of the assessee.

4. Though the learned counsel for the Revenue vehemently contended that the Judgment, in the matter of Shantagauri Ramniklal Trust And Others Vs. Commissioner of Income Tax And Another, deserves to be reconsidered by Larger Bench, in absence of any other material or any Judgment of the High Courts or some observations made by the Supreme Court, it would not be prudent for us, nor it

would be possible to refer the matter to the Larger Bench, the prayer is rejected. The Questions No. 1 and 2, in view of the earlier Judgments of the Court, are answered in favour of the assessee.

5. So far as the Question No.3 is concerned, it can simply be disposed of by observing that, if the covenants of the Trust Deed are clarified by clarificatory note, then the clarification would change the complex of the covenants right from the inception. A clarification would explain what is already available, if it does not change the very nature of the earlier convenant of the Trust Deed.

6. Looking to the totality of the circumstances and the judicial pronouncements made earlier, we are of the opinion that all the questions are required to be answered in favour of the assessee. The Reference is accordingly disposed of.

[R.S. Garg, J.]

[M.R. Shah, J.]

rmr.